No. 14886

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HENRY RAGONTON RABANG,
Appellant,

vs.

JOHN P. BOYD, District Director, Immigration and Naturalization Service,
Appellee.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

HONORABLE WILLIAM J. LINDBERG, *Judge*

BRIEF OF APPELLEE

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JURISDICTIONAL STATEMENT

Jurisdiction of the District Court is conferred by Section 2241, Title 28, U.S.C., and on this Court by Section 2253, Title 28, U.S.C.

STATUTE INVOLVED

The statute involved is the Act of February 18, 1931, Chapter 224, 46 Stat. 1171, as amended by Section 21, Chapter 439, Title II, Act of June 28, 1940, 54 Stat. 673, former Section 156 (a), Title 8, U.S.C. This statute is set forth in pertinent detail on page 3 of appellant's brief, as well as in appellee's Argument herein.

STATEMENT OF THE CASE

Appellant is a native of the Philippine Islands who has never been naturalized nor otherwise become a citizen of the United States. On February 12, 1951, in the United States District Court, Seattle, Washington, he was convicted on his plea of guilty of the crime of selling and giving away narcotic drugs, in violation of Section 2554 (a), Title 26, U.S.C. He was sentenced to confinement in the King County, Washington, jail for a period of six months on Count One of the Indictment, which sentence was suspended, and he was placed on probation for three years.

The Immigration and Naturalization Service instituted deportation proceedings against the appellant on February 27, 1951, under the Act of February 18, 1931, as amended, on the grounds that on or after June 28, 1940, he had been convicted of the violation

of a law relating to traffic in narcotics, to-wit: sell and give away narcotic drugs in the form of morphine tartrate syrettes (R. 49). The appellant was ordered deported on October 26, 1951, pursuant to the said deportation proceedings, and a subsequent appeal was dismissed by the Board of Immigration Appeals.

The appellant thereafter appealed the deportation order to this court and said appeal was dismissed for lack of prosecution.

On March 1, 1955, the Acting Regional Commissioner, Northwest Region, Immigration and Naturalization Service, moved the Board of Immigration Appeals to reopen and reconsider the order of deportation in view of the decision of the United States Supreme Court in the case of *Barber v. Gonzales*, 347 U.S. 637, 74 S.Ct. 822, 98 L.Ed. 1009, with a view of terminating the proceedings or for such other action as it deemed appropriate (R. 21, 22).

On April 7, 1955, the Board of Immigration Appeals denied the said motion for reconsideration for the reason that the decision in *Barber v. Gonzales*, *supra*, is not applicable to the instant case. (R. 17, 19).

The District Court for the Western District of Washington, Northern Division, denied appellant's petition for Writ of Habeas Corpus, Show Cause, and Declaratory Judgment on July 29, 1955. The court,

in its Findings of Fact and Conclusions of Law, found that appellant had been convicted of the crime of selling and giving away narcotic drugs in violation of Section 2554 (a), Title 26, U.S.C., and that appellant was, at all times therein material, an alien subject to deportation under the above-named statute (R. 100, 101, 102). Appellant has appealed from that order to this court.

QUESTION PRESENTED

Can a native of the Philippine Islands, who came to the United States as a national in 1930 and who has never been naturalized nor otherwise become a citizens of the United States, be deported pursuant to the provisions of former Section 156 (a), Title 8, U.S.C., after having been convicted for violation of a statute prohibiting and regulating the sale or giving away of narcotic drugs?

SUMMARY OF ARGUMENT

Appellant argues that he is not an alien, but that he is a national, having come to the United States as a national in 1930; that his status as a national has not changed notwithstanding the granting of independence to the Philippine Islands in 1946; and that Congress has not the power to deprive him of that status in the absence of a voluntary act of expatriation on his part.

The argument is not novel, and has been rejected in a series of decisions previously determined in this jurisdiction. *Cabebe v. Acheson*, 183 F. 2d 795; *Mangaoang v. Boyd*, 205 F. 2d 553, (cert. denied 346 U.S. 876); *Gonzales v. Barber*, 207 F. 2d 398, (reversed on other grounds, 347 U.S. 637, 74 S.Ct. 822, 98 L.Ed. 1009); and *United States v. Boyd*, 222 F. 2d 445.

The Government contends that appellant is an alien, subject to the laws of the United States pertaining to aliens, and that as such he is deportable under the provisions of the Act of February 18, 1931, c. 224, 46 Stat. 1171, former Section 156 (a), Title 8, U.S.C., as amended, and that he is deportable under the provisions of that Act regardless of whether or not he has ever made an "entry" into the United States within the meaning of any statute.

Former Section 156 (a), Title 8, U.S.C., the statute herein under consideration, forecloses any argument that an "entry" is a prerequisite to a valid order of deportation, as the statute, unlike prior similar statutes, does not condition the right to deport for conviction of therein enumerated crimes upon "conviction after entry."

ARGUMENT

1. *Is the Appellant an Alien?*

The appellant contends that inasmuch as he is a native of the Philippine Islands and had the status of a national prior to Philippine Independence in 1946, he remains a national of the United States and cannot be deported therefrom as an alien pursuant to United States laws relating to aliens.

The term "nationality" has been defined as denoting a relationship between an individual and a nation involving the duty of obedience or allegiance on the part of the subject and protection on the part of the state. *Cabebe v. Acheson*, 183 F. 2d 795 (C.A. 9, 1950).

On July 4, 1946, the President of the United States proclaimed that the United States "hereby withdraws and surrenders all rights of possession, supervision, jurisdiction, control, or sovereignty now existing and exercised by the United States of America in and over the territory and the people of the Philippines," and that he, for the United States, recognized "the independence of the Philippines as a separate and self-governing nation." *Cabebe v. Acheson, supra*, A treaty to this effect was entered upon with the Republic of the Philippines. *Treaty of July 4, 1946*, effective October 22, 1946, 61 Stat. 1174.

This court commented on the effect of this treaty upon the status of Filipino nationality in the following language:

> "The status of United States nationality for Filipinos was the direct result of the United States' assumption of sovereignty of the Islands. When the United States relinquished its sovereignty, there remained no basis for such status." *Cabebe v. Acheson*, 183 F. 2d 795, p. 801.

Appellant argues, on page 18 of his brief, that the issue in the *Cabebe* case involved only a person domiciled in Hawaii, and that the facts involved in the *Cabebe* case are not in any way decisive of the issue of appellant's nationality, since he came to the continental United States for permanent residence in 1930.

This argument is answered squarely in the case of *Mangaoang v. Boyd*, 205 F. 2d 553 (C.A. 9, 1953). In this case appellant, a native of the Philippines, came to the continental United States for permanent residence in 1926, and lived in the United States continuously since that day. The court stated:

> "Appellant asserts that he is not now an alien, but that he always has been and remains a national of the United States. It is clear that to maintain this position he must demonstrate that the rule of *Cabebe v. Acheson, supra*, does not apply to him. In that case this court held that upon proclamation of Philippine Independence on July 4, 1946, Filipino nationals of the United

States lost the status of nationality whether they were then inhabitants of the Islands or domiciled in the United States. We said, 183 F. 2d at page 801: 'The status of the United States nationality for Filipinos was the direct result of the United States' assumption of sovereignty over the Islands. When the United States relinquished its sovereignty, there remained no basis for such status.'

"Appellant argues that since Cabebe was domiciled in Hawaii and not in continental United States, the rule of that case should not be applied to him. Further he challenges the correctness of the decision in the Cabebe case and seeks to have us re-examine it. We think that it was rightly decided and that under its rule the appellant became an alien on July 4, 1946."

It may be well to note that appellant prevailed upon appeal in the *Mangaoang* case, *supra*, on other grounds.

The same contention was again ruled on contrary to appellant's position in *Gonzales v. Barber*, 207 F. 2d 398 (reversed, 347 U.S. 637 on other grounds). In this case, Gonzales, a native of the Philippine Islands, lawfully came to the continental United States in 1930, and had since resided here. On the question of his status as an alien, the court stated on page 400 of its opinion:

"Gonzales next contends that he is not within the statutory class referred to in the deportation order. He claims that he is not an alien but a national of the United States. This contention is

without merit. Gonzales became an alien on July 4, 1946, upon the proclamation of Philippine Independence. *Mangaoang v. Boyd*, 9 Cir., 205 F. 2d 553; *Cabebe v. Acheson*, 9 Cir., 183 F. 2d 795."

Appellant's contention that Congress cannot declare a loss of nationality is likewise without merit. *United States v. Wong Kim Ark*, 169 U.S. 649, 18 S.Ct. 456, 42 L.Ed. 890, cited by appellant in support of the contention, involves the power of naturalization and the power to confer citizenship. Appellant has never been naturalized or otherwise become a citizen, and the case cited is not in point.

It is the government's position that, as demonstrated by the cases cited above, this is simply another case involving the same question of law, and substantially the same facts, as cases already decided by this court contrary to appellant's contention that he is not an alien, and that the rule announced in those cases is determinative of the issue in the instant case. Appellant is clearly an alien within the meaning of the Act of February 18, 1931, as amended.

II. *"Entry" Is Not a Prerequisite to Deportation Under the Act of February 18, 1931, as Amended.*

Appellant's second Specification of Error states, in effect, that appellant cannot lawfully be deported because, having been at the time of his arrival, a na-

tional, he never "entered" the United States. The fallacy of this argument becomes apparent when the appellant's purported authorities in support of the argument are considered.

Barber v. Gonzales, 347 U.S. 637, 74, S.Ct. 822, 98 L.Ed. 1009, and *Del Guerico v. Gabot*, 161 F. 2d 559 (C.A. 9, 1947), are both cases involving deportation proceedings under former Section 155 (a), Title 8, U.S.C., Section 19 of the Immigration Act of 1917. That statute provided, in part:

> " * * * except as hereinafter provided, any alien * * * who after May 1, 1917, is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States * * *" shall be deported.

As is evident, the statute, by its own language, conditions deportation upon conviction of a crime "committed within five years after the entry of the alien to the United States."

For purposes of comparison, the pertinent provisions of the Act under which the Government seeks to have the appellant deported is set forth:

> "Any alien (except an addict who is not a dealer in, or peddler of, any of the narcotic drugs mentioned in this section) who, after February 18, 1931, shall be convicted for violation of or con-

> spiracy to violate any statute of the United States or of any State, Territory, possession, or of the District of Columbia taxing, prohibiting, or regulating the manufacture, production, compounding transportation, sale, exchange, dispensing, giving away, importation, or exportation of opium, coca leaves, heroin, marihuana, or any salt derivative, or preparation of opium or coca leaves, shall be taken into custody and deported in manner provided in sections 155 and 156 of this title. Feb. 18, 1931, c. 224, 46 Stat. 1171; June 28, 1940, c. 439, Title II, §21, 54 Stat. 673." Former Section 156a, Title 8, U.S.C.

Both the *Gonzales* and the *Del Guerico* cases, *supra*, are authority for the proposition that lawful deportation is conditioned upon conviction of a crime after "entry," because the statute involved in those cases so *provided.*

In the instant case, however, the appellant has been ordered deported pursuant to the Act of February 18, 1931, *supra*, which Act does not condition deportation upon conviction of a crime after "entry." It simply requires that the person sought to be deported be an alien, and that he be, or have been, convicted for violation of any law regulating traffic in narcotics after the effective date of the enactment. The appellant in this case was so convicted twenty years after the enactment of the Act under which he is sought to be deported, and he was an alien at the time of such conviction and at a time when the said Act

was effective, having been an alien for all purposes since July 4, 1946.

The language of the Act is too clear and unambiguous to permit any other conclusion than that appellant, as an alien, is subject to deportation under its terms.

Appellant's third Specification of Error relates to alleged error on the part of the District Court in concluding that nationality can be divested in the absence of a voluntary act of expatriation. The argument assumes a fact not in existence, that appellant is a "national." This argument has been answered in Part I of appellee's Argument, and we will not reiterate it here. However, it should be pointed out that the court's ruling does not relate to *divestiture* of nationality; it simply holds that appellant is an alien, subject to deportation under the provisions of former Section 156 (a), Title 8, U.S.C. (R. 100).

CONCLUSION

For the above reasons it is repectfully urged that the decision of the court below be affirmed.

Respectfully submitted,

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United States Attorney

RICHARD F. BROZ
Assistant United States Attorney

December 30, 1955.